

B. B. WADLEIGH

IBLA 79-428

Decided November 6, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring mining claims void. W MC 19695-19772; W MC 22882-22883.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Unpatented mining claims are properly deemed to have been abandoned and declared void where a claimant fails to comply with the requirements of the recording law by showing that a copy of the claimant's notice of intention to hold the claim (where an affidavit of assessment work is not filed), was filed in the local jurisdiction's office where notices of the location of the claims are recorded.

2. Regulations: Generally -- Regulations -- Interpretation

In the absence of public interest considerations and intervening rights, a regulation amendment which would benefit a pending public land matter may be applied to it. However, where the application is not in compliance with the amendment, the application must fail.

APPEARANCES: B. B. Wadleigh, Santa Fe, New Mexico, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

B. B. Wadleigh appeals from a decision dated April 18, 1979, rendered by the Wyoming State Office, Bureau of Land Management (BLM),

holding the Deep Lake Nos. 1-38 and Twin Springs Nos. 1 and 2 mining claims, all located in 1977, void. The decision recites as follows:

The basis for this decision is 43 CFR 3833.4(a) which states, "The failure to file such instruments as are required by Subparts 3833.1 and 3833.2 within the time periods described therein, shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void." [1/]

Accordingly, your failure to comply with our requests of January 8 and February 2, 1979, by providing us with the date the Notice of Intent to Hold the above cited claims was recorded in the office of local jurisdiction in which the claims are located constitutes an abandonment of placer mining claims and they are considered void.

By letter dated February 2, 1979, BLM advised appellant that it had received his notice of intent to hold on December 28, 1978. BLM also requested appellant to provide it with the date on which the notice of intent to hold was recorded in the local jurisdiction where the claims were located. In making this request BLM referred to 43 CFR 3833.2-3(f) (1978). 43 CFR 3833.2-3 (1978) provided in its entirety as follows:

§ 3833.2-3 Form -- notice of intention to hold claim.

A notice of intention to hold a mining claim or group of mining claims or mill or tunnel sites shall be in the form of a letter signed by the owner or owners of such claim or site or their agent setting forth the following information:

(a) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(b) Any change in the mailing address, if known, of the owner or owners of the claim;

(c) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(d) A statement that the owner(s) intend to continue diligent exploration or development of the claim;

1/ These provisions are stated in the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1976).

(e) The reasons that physical, legal, or other impediments, beyond the control of the owner(s), have prevented his filing an affidavit of assessment work performed or a detailed report of geological, geochemical, and geophysical survey under 43 CFR 3833.2-2 (such impediments may include, but are not limited to, deferment of annual assessment work, in which case the notice must be accompanied, by a copy of petition for deferment and the order or decision disposing of such petition); and

(f) As required by section 314(a)(1) of the Act, the date on which a copy of the notice of intention to hold the mining claim, was filed in the office of the local jurisdiction in which the claim is located.

Appellant's statement of reasons makes the following assertions:

- 1) The requests of Jan. 8th and Feb. 2nd were answered.
- 2) Notice of Intent to Hold were [sic] filed with BLM.
- 3) Claims were not due for any filing of affidavits or documentation in office of any "local jurisdiction" other than local Cheyenne Office of BLM.
- 4) The intent of the law has been complied with and we are in possession of claims performing exploration work (geochemicals).

[1] The statement of reasons is not responsive to BLM's requests, and there is no indication from the file that appellant provided the requested information. The regulation quoted above (43 CFR 3833.2-3(f)) 2/ is clearly supportive of BLM's request for the additional information sought. BLM attempted twice to solicit from

2/ On February 14, 1979, a Federal Register publication, 44 FR 9720-24, amended 3833.2-3 to read as follows:

"§ 3833.2-3 Form -- notice intention to hold claim or site.

"(a) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either (1) an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

"(i) The serial number assigned to each claim by the authorized officer upon filling in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply

appellant the date of filing in the local jurisdiction. It is the applicant's responsibility to conform his filings to the requirements of the regulations. Lendal R. Smith, Sr., A-28868 (Aug. 10, 1962).

Appellant's third statement of reasons declares: "Claims were not due for any filing of affidavits or documentation in office of any 'local jurisdiction' other than local Cheyenne office of BLM."

It is somewhat difficult to understand appellant's position, but he seems to suggest that the only office in which the notice of intention to hold must be filed is the proper Bureau of Land Management office. This is not so. Section 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1976) (hereafter referred to as the Act), requires in subparagraph (a)(1) that either a notice of intention to hold the mining claim, or an affidavit of assessment work be

fn. 2 (continued)

with the requirement in the act to file an additional description of the claim;

"(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

"(iii) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

"(iv) A statement that the owner(s) intend to continue development of the claim; and

"(v) The reason that the annual assessment work has not been performed or an affidavit of assessment work performed or a detailed report of geological, geochemical or geophysical survey under § 3833.2-2, has not been filed or

"(2) The decision on file in the proper BLM office which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date required for filing a notice of intention to hold a mining claim under § 3833.2-1 of this title or a petition for deferment, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

"(b) A notice of intention to hold a mill or tunnel site(s) shall be in the form of a letter signed by the owner or owners of such sites or their agent setting forth the following information:

"(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

"(2) Any change in the mailing address, if known, of the owner or owners of the site(s); and

"(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independent mill site will continue to be used for the purposes of a quartz mill or reduction works; or

"(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of the vein or lode."

filed "for record in the office where the location notice or certificate is recorded." Subparagraph (a)(2) requires that a copy of "the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection" be filed in the proper office of the Bureau. Thus, the Act requires that the notice of intention to hold must be filed in the county recorder's office where the location notice or certificate is recorded and a copy thereof with BLM.

The purpose of 43 CFR 3833.2-3(f) (1978), requiring the date on which the copy of the notice of intention to hold the mining claim was filed in the office of the local jurisdiction in which the claims was located, was to establish proof that the notice had been filed as required by subparagraph (a)(1) of section 314 of the Act. Under the revised regulation, an actual copy of the notice filed with the county recorder must be furnished. See n.2, and discussion, infra.

We believe BLM's requests for information from appellant could have more clearly stated the then governing requirements. However, in the absence of evidence that appellant met the requirements of section 314(a)(1), we must find that the claims are deemed abandoned in accordance with section 314(c) of the Act.

In an effort to find a justification for the continued viability of the mining claims in issue, we have considered the possible applicability of the doctrine, enunciated in Henry Offe, 64 I.D. 52 (1957), and recently discussed in Wilfred Plomis, 34 IBLA 222, 228 (1978). In essence, these cases stand for the proposition that a regulation amended in a manner that would benefit a pending application may be applied in the absence of countervailing public interest considerations and intervening rights.

In the case at bar the amended regulation no longer requires the date be shown "on which a copy of the notice of intention to hold the mining claim * * * was filed in the office of the local jurisdiction on which the claim is located." The amended regulation, 43 CFR 3833.2-3 (44 FR 9723 (Feb. 14, 1979)), requires an "exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located * * *."

The amended regulation avails appellant naught 3/ since he has not shown that his submitted copy of "Notice of Intention To Hold Mining Claim" was so recorded in the appropriate county recorder's office

3/ We also note that appellant has failed to show materials required under the October 1978 43 CFR and February 14, 1979, regulations, i.e.,

- (1) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;
- (2) A statement that the owner(s) intend to continue diligent exploration or development of the claim; and
- (3) The reasons why assessment work has not been performed.

and that his copy is a true copy thereof. In the circumstances no relief can be afforded him.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

